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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

PATEL, YOGESH P

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3732

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/574,313
Filing Date: December 13, 2006
Appellant(s): JORNEUS ET AL.

Rabinder N. Narula
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 02/23/2009 appealing from the Office action mailed 09/26/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,681,541

Snaper

07-1987

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1,3-7, 10, 12-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, it is not clear what applicant intends to say by "the drive part comprising second lateral surfaces." How many lateral surfaces are being discussed?

2. Claims 1, 3-7, 10, 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engman (2002/0177105) in view of Snaper (4,681,541).
Engman discloses a dental implant and insertion tool including a dental implant 10 comprising an upper portion (fig. 1) with an internal socket 26, 27 formed on a top surface of the upper portion, the internal socket comprising a first portion and a second portion spaced along a longitudinal axis of the dental implant (fig. 1), the first portion disposed adjacent the top surface of the dental implant and defining first lateral surfaces, the second portion spaced further from the top surface and defining a lateral guide surface; and a turning instrument 49 configured to engage the internal socket and to turn the dental implant, the turning instrument comprising a drive part (e.g. 50) and a guide pin part (the bottom extending portion of 49), the drive part comprising second lateral surfaces that cooperate with the first lateral surfaces in the internal socket, the guide pin part extending longitudinally beyond the drive part of the turning instrument such

that the guide pin part is configured to be received within the second portion of the socket of the dental implant with the guide pin part corresponding to the lateral guide surface of the socket (fig. 6-7). Engman failed to disclose at least one of the first and second lateral surfaces comprises a friction- enhancing coating comprising at least one of titanium nitride and chromium carbide.

Snaper teaches a dental bur having titanium nitride coating (col. 3, lines 8-10). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Engman by providing titanium nitride coating on turning tool taught by Snaper since titanium nitride is well-known for its hardness, corrosion- resistant and biocompatible coating. Further, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply coatings on all or part of the turning tool (e.g. as desired) to tolerate more torque when necessary turning the implant.

3. Regarding claim 12, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Engman by providing appropriate length of the guiding part, since it depends on various factors (e.g. implant length, depth from the top surface). Regarding claim 13-16, the guide pin part comprises first and second longitudinally extending part having first and second diameters, respectively (fig. 6).

(10) Response to Argument

On pages 6-7 of the Appeal Brief, the rejection of claims 1, 3-7, 10 and 12-16 under 35 USC 112 second paragraph:

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Appellant argues that the first and second lateral surfaces are clear from the claim and also from the description in the specification. The Examiner respectfully disagrees because it is not clear whether the drive part comprises any first lateral surfaces which would cooperate with the internal socket of the implant? The claim 1 recites “the drive part comprising second lateral surfaces.” It appears that the Applicant is missing the first lateral surfaces of the drive tool. Therefore, the Examiner believes that these claims are indefinite.

On pages 8-10 of the Appeal Brief, the obviousness rejection of claims 1, 3-7, 10 and 12-16 over Engman in view of Snaper

Appellant agrees that Snaper discloses the use of titanium nitride coating on dental tool (e.g. dental bur). Appellant argues that the final office action ignores the different functions of a dental bur and a turning instrument for a dental implant and that the combination of Engman and Snaper is improper.

The Examiner respectfully disagrees because the coating of titanium nitride has a mechanical property that is capable of enhancing friction between a turning instrument and the internal socket as claimed, and also usage of titanium nitride for its hardness, corrosion-resistant and biocompatibility and improving surface properties is well-known in the art. Therefore, the Examiner believes that the Snaper teaches the limitation and the combination of Engman in view of Snaper is proper.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Yogesh Patel/

Conferees:

/Cris L. Rodriguez/
Supervisory Patent Examiner, Art Unit 3732

/Thomas C. Barrett/
Supervisory Patent Examiner, Art Unit 3775